APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,726	09/30/2003	Joshua S. Allen	RSW920030148US1 (116)	6352

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EXAMINER
DONABED, NINOS J

ART UNIT	PAPER NUMBER
2444	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/675,726	ALLEN ET AL.
	Examiner	Art Unit	
	NINOS DONABED	2444	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *10 February 2011*.

2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *24-27,29-32 and 34-37* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *24-27, 29-32, 34-37* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage
         application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ ~~Notice of Draftsperson's Patent Drawing Review (PTO-948)~~

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

Response to Amendment

This communication is in response to Applicant's amendment dated 9/22/2010.

Claim(s) 28, 33, 38 has/have been cancelled. Claim(s) 24, 29, 34 has/have been

amended. Claim(s) 24-27, 29-32, 34-37 is/are pending in the application.

Claim Rejections - 35 USC § 101

1.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
> matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
> conditions and requirements of this title.

Claims 34-37 are rejected under 35 U.S.C. 101. Regarding claim 34, the

"machine readable storage medium" is geared towards both statutory and non-statutory

subject matter (i.e. signal per se). Since the "machine readable storage medium" is not

defined in Applicant's specification. Therefore, Examiner's broadest reasonably

interpretation of "machine readable storage medium" would include a signal per se.

Thus, Claim 34 is rejected under USC 101. Claims 35-37 are rejected for being

dependent on claim 34.

Claim Rejections - 35 USC § 103

2.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

3.   Claims 24-38 rejected under 35 U.S.C. 103(a) as being unpatentable over

Nagasawa (United States Patent Application Publication 20020116234) in view of Betge

(United States Patent Application Publication 20050177629).

        Regarding claim 24,

        Nagasawa teaches a computer hardware system for estimating a service level

agreement (SLA) breach value for a resource, comprising:

        a performance history database including historical performance data for the

resource; and **(See figures 1-2 and paragraphs [0058] – [0062], Nagasawa teaches

a database containing performance data for resources)**

        at least one computer hardware device coupled to the performance history

database, wherein the at least one computer hardware device is configured to: **(See

paragraphs [0047] – [0051], Nagasawa teaches a computer coupled to the

database)**

        retrieve the historical performance data for the resource, and **(See paragraphs

[0058] – [0062], Nagasawa teaches retrieving performance data for the resource)**

        Nagasawa does not explicitly teach generate the estimated SLA breach value by

processing the historical performance data for the resource.

        Betge teaches generate the estimated SLA breach value by processing the

historical performance data for the resource. **(See paragraphs [0046] – [0050], Betge)**

        It would have been obvious to one of ordinary skill in the art at the time the

invention was made to have known to combine the teachings of Betge with Nagasawa

because both deal with optimizing resources and SLA within a network system. The

advantage of incorporating generate the estimated SLA breach value by processing the

historical performance data for the resource of Betge into Nagasawa is that allows

optimum development of network configurations avoiding both over dimensioning and

failure to meet SLAs (Service Level Agreements). It allows creation of planning

proposals based on both network data and customer resource and service requirements

thus making the system more robust and efficient. **(See paragraphs [0005] - [0008],**

Betge)

     Regarding claim 25,

     Nagasawa and Betge teach the computer hardware system of claim 24, wherein

the at least one computer hardware device is configured to build a SLA. **(See**

paragraphs [0048] – [0050], [0078], Betge) See motivation to combine for claim 24.

     Regarding claim 26,

     Nagasawa and Betge teach the computer hardware system of claim 24, wherein

the at least one computer hardware device is configured to generate a chart, the chart

includes the historical performance data for the resource and a current SLA breach

value setting. **(See paragraphs [0070] – [0078], Betge)** See motivation to combine for

claim 24.

     Regarding claim 27,

Nagasawa and Betge teach the computer hardware system of claim 26, wherein
the at the at least one computer hardware device is configured to receive a proposed
SLA breach value setting and regenerate the chart to included the proposed SLA
breach value setting. **(See paragraphs [0048] – [0050], [0078], Betge)** See motivation
to combine for claim 24.

Regarding claim 28,

Nagasawa and Betge teach the computer hardware system of claim 24, wherein
the at least one computer hardware device is configured to generate, using a
compliance percentage, the estimated SLA breach value. **(See paragraphs [0058] –
[0062], Nagasawa)**

Regarding claim 29,

Nagasawa teaches a method for estimating a service level agreement (SLA)
breach value for a resource, comprising: **(See abstract, Nagasawa)**

retrieving historical performance data for the resource from a performance history
database; **(See figures 1-2 and paragraphs [0058] – [0062], Nagasawa teaches a
database containing performance data for resources)**

Nagasawa does not explicitly teach generating, with a computer hardware
system, the estimated SLA breach value by processing the historical performance data
for the resource; and displaying, using the computer hardware system, the estimated
SLA breach value.

Betge teaches generating, with a computer hardware system, the estimated SLA breach value by processing the historical performance data for the resource; and . **(See paragraphs [0046] – [0050], Betge)**

displaying, using the computer hardware system, the estimated SLA breach value. . **(See paragraphs [0046] – [0050], Betge)**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have known to combine the teachings of Betge with Nagasawa because both deal with optimizing resources and SLA within a network system. The advantage of incorporating generating, with a computer hardware system, the estimated SLA breach value by processing the historical performance data for the resource; and displaying, using the computer hardware system, the estimated SLA breach value of Betge into Nagasawa is that allows optimum development of network configurations avoiding both over dimensioning and failure to meet SLAs (Service Level Agreements). It allows creation of planning proposals based on both network data and customer resource and service requirements thus making the system more robust and efficient. **(See paragraphs [0005] - [0008], Betge)**

Regarding claim 30,

Nagasawa and Betge teach the method of claim 29, wherein the historical performance data is based upon an aggregation of customers accessing the resource. **(See paragraphs [0047] – [0049], Betge)** See motivation to combine for claim 29

Regarding claim 31,

Nagasawa and Betge teach the method of claim 29, wherein the historical

performance data is based upon a single specific customer accessing the resource.

(See paragraphs [0023] – [0026], Betge) See motivation to combine for claim 29

Regarding claim 32,

Nagasawa and Betge teach the method of claim 29, wherein the generating

comprises identifying an SLA breach value trend based upon the historical performance

data; and predicting a future SLA breach value based upon the trend. **(See**

paragraphs [0048] – [0050], [0078], Betge) See motivation to combine for claim 29.

Regarding claim 33,

Nagasawa and Betge teach the method of claim 29, wherein the generating

comprises receiving a compliance percentage; and computing said estimated SLA

breach value based upon the compliance percentage. **(See paragraphs [0047] –**

[0049], Betge) See motivation to combine for claim 29

Regarding claim 34,

Nagasawa teaches a machine readable storage having stored therein computer

program code for estimating a service level agreement (SLA) breach value for a

resource, the computer program code, which when executed by a computer hardware

system, causes the computer hardware system to perform: **(See abstract, Nagasawa)**

retrieving historical performance data for the resource from a performance history database; **(See figures 1-2 and paragraphs [0058] – [0062], Nagasawa teaches a database containing performance data for resources)**

Nagasawa does not explicitly teach generating, with a computer hardware system, the estimated SLA breach value by processing the historical performance data for the resource; and displaying, using the computer hardware system, the estimated SLA breach value.

generating, with a computer hardware system, the estimated SLA breach value by processing the historical performance data for the resource; and **(See paragraphs [0046] – [0050], Betge)**

displaying, using the computer hardware system, the estimated SLA breach value. **(See paragraphs [0046] – [0050], Betge)**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have known to combine the teachings of Betge with Nagasawa because both deal with optimizing resources and SLA within a network system. The advantage of incorporating generating, with a computer hardware system, the estimated SLA breach value by processing the historical performance data for the resource; and displaying, using the computer hardware system, the estimated SLA breach value of Betge into Nagasawa is that allows optimum development of network configurations avoiding both over dimensioning and failure to meet SLAs (Service Level Agreements). It allows creation of planning proposals based on both network data and customer

resource and service requirements thus making the system more robust and efficient.

(See paragraphs [0005] - [0008], Betge)

Regarding claim 35,

Nagasawa and Betge teach the machine readable storage of claim 34, wherein

the historical performance data is based upon an aggregation of customers

accessing the resource. **(See paragraphs [0047] – [0049], Betge)** See motivation to

combine for claim 29

Regarding claim 36,

Nagasawa and Betge teach the e machine readable storage of claim 34, wherein

the historical performance data is based upon a single specific customer accessing the

resource. **(See paragraphs [0023] – [0026], Betge)** See motivation to combine for

claim 29.

Regarding claim 37,

Nagasawa and Betge teach the machine readable storage of claim 34, wherein

the generating comprises identifying an SLA breach value trend based upon the

historical performance data; and predicting a future SLA breach value based upon the

trend. **(See paragraphs [0048] – [0050], [0078], Betge)** See motivation to combine for

claim 29.

Regarding claim 38,

Nagasawa and Betge teach the machine readable storage of claim 34, wherein
the generating comprises receiving a compliance percentage; and computing said
estimated SLA breach value based upon the compliance percentage. **(See paragraphs
[0047] – [0049], Betge)** See motivation to combine for claim 29

Response to Arguments

Applicant's arguments filed 2/10/2011 have been fully considered but they are
not persuasive.

Applicant's Argument: The Applicant argues that "the generation of the estimated
SLA breach value by processing retrieved historical performance data for the resource
and based upon a received compliance percentage. Applicant submits that these
limitations are not disclosed by any of the cited references or any combination thereof.
In rejecting the limitation of retrieving historical performance data for the resource".

Examiner's Response: Examiner respectfully disagrees and points to paragraphs
[0058] – [0064] of Nagasawa. The passage teaches "the brokering server 204 circulates
and trades the resources with the performance parameters which have been
quantitatively guaranteed by the credit data 205. Specifically, the trade brokering
server 204 refers to the database of the performance data 208 for the resource
providers and makes an anticipatory decision of what combination of the computer
resources 251 managed by any administrator 103 of operating the resources for

information processing services and a service any provider 102 of the resources for

information processing services can satisfy the service performance request

specifications (SLA) 201. The brokering server 204 registers the performance request

specifications 211 separated for the resource providers whose resources are expected

to sufficiently fulfill the requirements of the performance request specifications

according to a specific service type when they are merged and individual provider's

consent data (resource invoice) for service offering on contract". This section clearly

teaches using a performance database which included data about past performances to

make "anticipatory" decisions regarding SLA values.

Furthermore Betge-Brezetz teaches "Two solutions have been proposed for

predicting evolution. The first consists in defining link bandwidth usage thresholds

and/or router congestion indication thresholds so that in the event of violation of said

thresholds the network manager is advised that the network needs to evolve. The

second solution consists in carrying out market research to estimate how customer

requirements are evolving and to deduce how the network should evolve… For

example, if the bandwidth threshold of a link is reached, there is a tendency to increase

the capacity of the link systematically by a fixed percentage, regardless of what is really

required. In the case of the second solution, the general trend of service usage

evolution is known, but the extent to which this evolution risks disturbing the network is

not known, and even less so the location(s) of future disturbances". This section clearly

teaches a bandwidth compliance rate threshold percentage which is utilized to

determine the SLA values within the system.

For at least the above mentioned reasons, the prior art of record does indeed cover the claim limitations.

Conclusion

4.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any response to this Office Action should be **faxed** to (571) 273-8300 or **mailed** to:

    Commissioner for Patents
    P.O. Box 1450
    Alexandria, Virginia 22313-1450

            Hand-delivered responses should be brought to
    Customer Service Window
    Randolph Building
    401 Dulany Street
    Alexandria, Virginia 22314

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NINOS DONABED whose telephone number is (571)270-3526. The examiner can normally be reached on Monday-Friday, 7:30 AM-5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Vaughn can be reached on (571) 272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/N. D./
Examiner, Art Unit 2444

/William C. Vaughn, Jr./

Supervisory Patent Examiner, Art Unit 2444